

# THE MARTHA'S VINEYARD COMMISSION

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## Minutes of the Special Meeting of January 22, 2004

Held in the Olde Stone Building,  
33 New York Avenue, Oak Bluffs, MA

### IN ATTENDANCE

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**Commissioners:** James Athearn (Elected – Edgartown), John Best (Elected – Tisbury), Christina Brown (Elected – Edgartown), Linda DeWitt (Appointed – Edgartown), Jane A. Greene (Appointed – Chilmark), Katherine Newman (Appointed – Aquinnah), Ned Orleans (Appointed – Tisbury), Megan Ottens-Sargent (Elected – Aquinnah), Deacon Perrotta (Appointed – Oak Bluffs), Robert Schwartz, (Appointed – West Tisbury), Doug Sederholm, (Elected – Chilmark), Linda Sibley, (Elected – West Tisbury), Paul Strauss (Appointed – County), Richard Toole (Elected – Oak Bluffs), Andrew Woodruff (Elected – West Tisbury)

**Staff:** Mark London (Executive Director), Bill Veno (Senior Planner), Jennifer Rand (DRI Coordinator), Jeff Wooden (Administrator), Chris Seidel (GIS Specialist), Christine Flynn (Housing and Economic Development)

### 1. COLEMAN SUBDIVISION (DRI No. 575) – CONTINUATION OF PUBLIC HEARING

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There being a quorum present, Christina Brown, Hearing Officer called the public hearing to order at 7:37 P.M. and read the Public Hearing Notice.

Doug Sederholm recused himself because he had represented the Chilmark Planning Board in a previous application of the Colemans. He left the meeting room.

Richard Toole and Paul Strauss did not participate in the first part of the hearing and announced plans to observe, but not participate in the continuation of the hearing.

*Commissioners present: J. Athearn, J. Best, C. Brown, L. DeWitt, J. Greene, K. Newman, N. Orleans, M. Ottens-Sargent, D. Perrotta, R. Schwartz, L. Sibley, P. Strauss (present as an observer only), R. Toole (present as an observer only), A. Woodruff.*

*Richard Gallogly, counsel, and Glen Provost, agent, represented the owners, Richard and Melanie Coleman.*

#### 1.1 Applicant's Presentation

**Richard Gallogly** clarified the easements:

- The easement on the Muldaur property benefits the 10-acre and the 7-acre parcels, and runs with the land. It is not limited in time nor restricted as to the number of lots, cars or

houses. The Colemans could have subdivided but have now agreed to a deed restriction limiting subdivision of the 7-acre and 10-acre lots.

- He suspects that if the 10-acre and 7-acre lots were sold to separate buyers, the buyer of the 10-acre lot would probably not be encumbered by the easement to the 7-acre lot.
- He said that the 7-acre lot is not part of this application, since no changes are planned. **Jane A. Greene** said that she considers the 7-acre lot part of this application.
- In response to the question as to whether the 1980 D.R.I. approval for the North Ridge Road subdivision included conditions that would limit the use of the road, he said that he was informed by MVC staff DRI Coordinator Jen Rand that there are no conditions that would limit the users of the road or the number of lots that could access via the road.
- Regarding a trail easement, he said, "They will agree.... I described it as a continuation of a pedestrian trail.... they don't want motorized vehicles.... I'm sure you don't want motorized vehicles...and so they are willing to agree to a pedestrian trail...assuming that there is a trail...they don't want to have an easement in isolation...I think it was mentioned by someone last week that it could be an easement that springs into effect as soon as you get the full connection...the other approvals that you need to extend the trail so that it makes sense, it's not sitting in the middle of nowhere, not connected to any other existing easements". **John Best** said "So you're saying they will allow a pedestrian, or a non-vehicular...and I assume that by vehicular they mean a power vehicle, not a mountain bike or something like that...access through there if it's connected." **Richard Gallogly** said, "That was a proposal last week, not by us...I don't know who made it". **John Best** asked if they would now agree to it. **Richard Gallogly** said "They will agree to it, although I will add that they just want it for pedestrians...that's the way it was described.... people go hiking". **Christina Brown** asked about mountain bikes, horses, and cross-country skiing. **Richard Gallogly** said "Cross-country skiing is pedestrians.... that's fine, but they don't want horses." **Christina Brown** again asked about mountain bikes. **John Best** said "the problem is that most of the users of the trails are horseback riders and mountain bikers, and you're going to have trails on either side that are accessible to them, and they're going to stop short." **Richard Gallogly** said "If that's consistent with the neighboring use...we don't want to be inconsistent.... that makes sense.... we want to be consistent.... we don't want to be inconsistent, so that's fine".
- The Colemans are not prepared to donate a 1-acre property for affordable housing. This is a broad issue that is beyond the scope of this subdivision. He suggested that the Land Bank funds and the Community Preservation Act funds be used to help deal with affordable housing.
- The Colemans are not willing to give a restriction prohibiting further subdivision of the 6-acre parcels. The regional impact has been addressed with the deed restrictions on the 7-acre and 10-acre parcels and the trail easement.
- The development area is for dwellings only and there could be non-habitable buildings outside the limits.
- The Colemans are offering a deed restriction on no further subdivision of the 7-acre and 10-acre lots to create other buildable lots. Zoning would only allow one house and one guesthouse on each of these lots.

## 1.2 Staff Report

**Jennifer Rand** said that Richard Gallogly had fairly represented the easement situation and the conditions of the previous D.R.I. approval.

## 1.2 Testimony from Public Officials

**Billy Meegan**, Chair of the Chilmark Planning Board, spoke.

- He asked whether the 10-acre deed restriction would limit access from the hammerhead to the two lower 6-acre lots. **Richard Gallogly** said that the Colemans would not retain that right when they sell the property.
- He asked about sharing the expense of repair and maintenance of North Ridge Road. **Richard Gallogly** said that they offered to share these expenses. **Linda Sibley** noted that the road association could require this.
- He said that we are now achieving something we once before achieved, namely limits on future development. He believes that the 7-acre lot is not buildable and that this would make it buildable. The Chilmark Planning Board would be happy to take the deed restriction and trail easement in exchange for making the 7-acre parcel buildable.

**Russell Walton**, Planning Board member, also endorsed the new plan.

## 1.3 Public Testimony

**Sheila Muldaur**, abutter and seller of the easement from North Ridge Road, said that she understands the lawyer to say that there would not be a vehicular easement across the 10-acre lot for the 6-acre lots, and asked for confirmation.

**Richard Gallogly** agreed that this would not happen; even if he didn't, the buyer would insist on it.

**Christina Brown** closed the public hearing at 8:12 p.m. The proposal will be discussed at LUPC on February 9.

Chairman Jim Athearn assumed the chair.

## 2. VINEYARD TRANSIT AUTHORITY (DRI – 524) – MODIFICATION REQUEST

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*Commissioners present: J. Athearn, J. Best, C. Brown, L. DeWitt, J. Greene, K. Newman, N. Orleans, M. Ottens-Sargent, D. Perrotta, R. Schwartz, D. Sederholm, L. Sibley, P. Strauss, R. Toole, A. Woodruff.*

*Applicant: Lois Crane and Angela Gompert represented the Vineyard Transit Authority.*

**Jennifer Rand** said that, in August 2000, the Commission approved the office and bus depot at the business park. At that time, there was a 1,000 square foot space that was built and not used. It was suggested at the first hearing that a list of possible uses be presented and approved. The issue now is whether the RMV moving into the space is a D.R.I. and requires a public hearing.

**Linda Sibley moved, and it was duly seconded, that the rental of the 1,000 square foot space on the first floor of the VTA to the Registry of Motor Vehicles is not a substantive change and does not require a public hearing; and that the Commission does not concur.**

- In response to a question from Mark London, **Angela Gompert**, VTA administrator, said that the Airport Business Park and the Town of Edgartown have strict signage rules. There would be a 16"x16" RMV sign on Barnes Road. The cars would come in via

the West Line Road entrance. There is adequate parking and the traffic impact would not be significant.

*Roll call vote. In favor: J. Athearn, J. Best, C. Brown, L. DeWitt, J. Greene, K. Newman, N. Orleans, M. Ottens-Sargent, D. Perrotta, R. Schwartz D. Sederholm, L. Sibley, P. Strauss, R. Toole, A. Woodruff. Opposed: 0. Abstentions: 0. The motion carried.*

**Linda Sibley** asked about the lighting, she has heard many complaints and asked **Angie** whether they really need to leave on as many lights at night. **Jennifer Rand** read from the file a letter that said that the FAA and FTA had required an alteration to the landscaping plan for security reasons. **Angela Gompert** said that the VTA has installed secondary timers that would have most of the lights go off after the last buses come in and go on again at 4:30 a.m. **Jim Athearn** asked whether it would be possible to make further reductions. **Angela Gompert** said that they are looking at doing this. She added that lights are required for backing the buses at dusk and at night, and that the fuel island is lit all night, for emergency vehicles. **Linda Sibley** suggested that the electrician look at lights that only go on when buses are actually there. **Angela Gompert** said that the problem is that those lights would take ten minutes to warm up.

*Linda Sibley moved, and it was duly seconded, that the decision on DRI 524 be modified to permit the rental of approximately 1000 square feet of floor space in the VTA building to house the Registry of Motor Vehicles. Roll call vote. In favor: J. Athearn, J. Best, C. Brown, L. DeWitt, J. Greene, K. Newman, N. Orleans, M. Ottens-Sargent, D. Perrotta, R. Schwartz D. Sederholm, L. Sibley, P. Strauss, R. Toole, A. Woodruff. Opposed: 0. Abstentions: 0. The motion carried.*

### 3. BUDGET

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**Jane A. Greene** explained the budget. There is a 9.4% budget increase, mostly salaries and an increase in legal expenses. There has been a reduction in many items.

*Linda Sibley moved and it was duly seconded to adopt the MVC budget for the 2004-2005 Fiscal Year as presented.*

- **Deacon Perrotta** asked about Chapter 831 limits about incurring debt by the MVC, with respect to outstanding legal bills. **Jeff Wooden** said that this is a current account payable, not debt.
- **Deacon Perrotta** questioned whether \$120,000 is a reasonable amount to budget for legal fees next year. **Jane A. Greene** said that increasing the budget by another \$100,000 would place considerable burden on the towns. **Linda Sibley** said that our attorneys have always been understanding about spreading out payments. She suggested that we consult counsel as to whether this poses a legal problem with Chapter 831. **Deacon Perrotta** suggested that the Commission could increase the legal budget and if at the end of the year, the funds were not needed, they could be returned to the town.
- **Mark London** clarified that the rent is for room rental for activities that cannot be accommodated in the MVC offices.

*Voice vote. In favor: 16. Opposed: 0. Abstentions: 0. The motion to adopt the budget carried.*

**Jeff Wooden** read aloud the assessments, namely Aquinnah- \$26,001, Chilmark – \$125,858, Edgartown – \$212,994, Gosnold – \$5,336, Oak Bluffs - \$101,218, Tisbury - \$102,031, and West Tisbury – \$102, 532, for a total of \$676,000.

**Linda Sibley** noted that the town assessments are based on equalized valuation.

#### 4. AMICUS BRIEFS

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Jane A. Greene announced a potential conflict, recused herself, and left the meeting room.

*Commissioners present: J. Athearn, J. Best, C. Brown, L. DeWitt, K. Newman, N. Orleans, M. Ottens-Sargent, D. Perrotta, R. Schwartz, D. Sederholm, L. Sibley, P. Strauss, R. Toole, A. Woodruff.*

*Christina Brown moved, and it was duly seconded, to instruct counsel to file an amicus brief on behalf of the MVC in the Appeals Court or the Supreme Judicial Court, as applicable, in the appeal of the decision concerning sovereign immunity for the Wampanoag Tribe with respect to land use matters, and for counsel to present arguments in favor the Wampanoag Tribe being subject to MVC jurisdiction and judicial enforcement of such jurisdiction as provided in the 1983 settlement agreement.*

- **Christina Brown** asked if the Commission was a party to the settlement, and if the settlement agreement says that the Tribe would adhere to Commission regulations.
- **Mark London** responded that the Commission is mentioned in the settlement agreement, but is not a party to the agreement, and would be affected by the outcome of the case, for example, with respect to DCPC regulations. **Megan Ottens-Sargent** noted that the Cranberry Bogs, the Clay Cliffs and the Herring Creek are excluded from Commission involvement, as stated in Chapter 831. She further assumed that other lands would be subject to Commission jurisdiction.
- **Mark London** explained that this would allow the Commission to express its opinion on this case.

*Voice vote. In favor: 13. Opposed: 1. Abstentions: 0. The motion carried.*

Jane A. Greene returned to the meeting.

*Commissioners present: J. Athearn, J. Best, C. Brown, L. DeWitt, J. Greene, K. Newman, N. Orleans, M. Ottens-Sargent, D. Perrotta, R. Schwartz, D. Sederholm, L. Sibley, P. Strauss, R. Toole, A. Woodruff.*

**Mark London** raised another case where the Commission might file an amicus brief. He offered some explanation of the Barnstable case, related to a “rate of development” regulation that was contested, and is being defended. In that there are similar rate of development regulations on Martha’s Vineyard, including some DCPC regulations, he suggested that that the Commission file an amicus brief.

**Linda Sibley** asked if any of the towns on the Island plan to file amicus briefs. **Mark London** responded that some towns may join in the brief. In response to further questions from Linda Sibley, **Mark London** responded that local counsel would be used, and that the cost should be modest.

*Linda Sibley moved, and it was duly seconded, to instruct counsel to file an amicus brief in the Supreme Judicial Court in support of the “rate of development” and affordable housing DCPC adopted by the Town of Barnstable, the Cape Cod Commission and the Barnstable County Assembly of Delegates, in support of the “building permit caps/rate of development” bylaws and DCPCs in place on Martha’s Vineyard.*

- **Jane A. Greene** said that she is concerned about running up legal bills. She will vote in favor of filing the brief, but not necessarily any other participation.

***Voice vote. In favor: 13. Opposed: 1. Abstentions: 0. The motion carried.***

## 5. APPROVAL OF MINUTES

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Deferred

## 6. LUPC MEETINGS

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Monday, January 26 at 5:30 P.M., B.A.D.D. Company post-public hearing review, and first discussion on major revision of standards and criteria. Jennifer Rand distributed a matrix of DRIs reviewed in the past year.

## 7. OTHER BUSINESS

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**Mark London** pointed out draft DRI application and guidance documents that were handed out. He noted that they are draft, and that comments are welcome.

**Mark London** asked if anyone else is interested in the mediation workshop on January 23.

There was a 5-minute recess.

## 8. PLANNING

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**Mark London** discussed the 418 Community Development Plan program.

- He outlined the precursor Buildout program, which calculated an increase in overall population of about 60%, from 15,000 to 25,000 people, assuming that the ratio of seasonal to year-round housing remains the same.
- He explained that the Executive Order 418 Community Development Plan program, in follow-up, includes four areas of planning; open space, affordable housing, economic development, and transportation. Because the MVC had just finished its Regional Transportation Plan update, the Vineyard towns were credited for that, and the focus remains on the other three areas.
- He explained that each town has formed a steering committee. Those committees have met at least once for each town. GIS Specialist Chris Seidel has prepared an ArcReader file for each town, with data from MassGIS and other sources.
- The towns are working on development of suitability maps, with assessment of appropriateness of existing zoning and other controls to accommodate growth in appropriate areas. The aim is to clarify whether existing zoning is appropriate, what are priority areas for open space preservation, and where commercial development should go. He added that smart growth principles suggest that infilling in the existing business areas is the most appropriate. Different towns will have different approaches to housing, as well as for commercial development.

- Ultimately, the towns will ask themselves if the existing controls will result in the desired outcome at buildout.
- The deadline to complete the 418 planning is June 30, 2004. He suggested that the materials gathered would provide data for subsequent master planning and other planning efforts for several years to come.

**Bill Veno** added some details regarding the buildout project.

- Approximately 1/3 of the land area of the Island is “available” for development.
- There were some inaccuracies in the original Buildout study, such as the labeling of unbuilt lots in an approved subdivision as “developed”.

**Mark London** added that the natural resource layers are more complete than some of the more subjective criteria such as scenic values and working landscapes. Several towns are now working to complete the latter layers.

**Bill Veno**, replying to a question from Jane Greene, said that conservation restrictions are represented in the open space layers.

**Mark London** added that the buildout project was a macro study, intended to give the towns a rough idea of what land is available.

**Mark London** said that the Commission would be looking at the Island Roads District, as a means of addressing visual impacts of development. He added that the towns’ regulations presently include height restrictions and setbacks, but nothing for vegetative buffers, as would be permitted within the Commission’s guidelines for the District. **Christina Brown** noted that Edgartown would be proposing a 25’ no-cut/no-build zone for some roads in the District.

**Mark London** said that a visual presentation of the Executive Order 418 planning would be made at a future meeting.

## 9. OTHER BUSINESS

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**Mark London** said that it was the last meeting for departing DRI Coordinator Jen Rand. **Jennifer Rand** thanked everyone for three fabulous years.

The Meeting was adjourned at 10:23 p.m.

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Chairman

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Date

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Clerk-Treasurer

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Date